

Nadler Letter to Ashcroft Calls for Withdrawal of Subpoenas for Women's Medical Records

Thursday, 12 February 2004

Washington, DC -- Congressman Jerrold Nadler (D-NY), ranking Democrat on the House Judiciary Subcommittee on the Constitution, today expressed outrage over the subpoena issued by the Department of Justice to acquire the medical records of every woman who obtained abortion services at several hospitals within the last two years, including four hospitals in New York City.

In a letter to Attorney General Ashcroft, Nadler and other members of Congress demanded that the Department of Justice withdraw the subpoena for patient medical records of women who have had abortions as well as abandon the position that federal law does not protect the right of Americans to have a confidential patient-doctor relationship under federal law.

In addition to Nadler, the letter to Ashcroft was signed by Representatives John Conyers (D-MI), Louise Slaughter (D-NY), Diana DeGette (D-CO), Edolphus Towns (D-NY), Eliot Engel (D-NY), Henry Waxman (D-CA), Jan Schakowsky (D-IL), Jim McDermott (D-WA), Lane Evans (D-IL), Grace Napolitano (D-CA), Chris Van Hollen (D-CA), Raul Grijalva (D-AZ), Joseph Crowley (D-NY), Michael Capuano (D-MA), Rick Boucher (D-VA), Peter Deutsch (D-FL), James Moran (D-VA), Diane Watson (D-CA), Robert Wexler (D-FL), Maurice Hinchey (D-NY), Rick Larsen (D-WA), Lois Capps (D-CA), Shelley Berkley (D-NV), Hilda Solis (D-CA), Nita Lowey (D-NY), William Lacy Clay (D-MO), Ed Pastor (D-AZ), Marty Meehan (D-MA), Bernie Sanders (I-VT), Zoe Lofgren (D-CA), Lucille Roybal-Allard (D-CA), Denise Majette (D-GA), Brian Baird (D-WA), Stephanie Tubbs-Jones (D-OH), and Tim Bishop (D-NY).

The text of the letter follows:

February 13, 2004

Dear Attorney General Ashcroft:

We are appalled at the position being taken by Justice Department attorneys in pending litigation challenging the constitutionality of the so-called "Partial Birth Abortion Ban Act of 2003." In that case the Department of Justice has subpoenaed the medical records of every woman who had obtained abortion services at several hospitals within the last two years. Additionally, the Department of Justice has maintained that no American has a legal right to the doctor - patient privilege under federal law.

We believe that both the subpoenas and the Justice Department's contention that no doctor-patient privilege exists, have no basis in law and pose a real danger to the fundamental rights of all Americans. We urge the Department to withdraw both claims and the subpoenas on which they are based.

We find the nature of this zealous and unwarranted intrusion into the most private aspects of women's medical histories, and the challenge to the medical privacy of all Americans, an unconscionable affront to longstanding public policy protecting the privacy of personal medical records. This public policy was most recently reaffirmed by Congress with the enactment of the Health Insurance Portability and Accountability Act of 1996 [HIPAA] which protects against the disclosure of "individually identifiable health information" including patient records, and allows patients to rely on state privacy laws if they are "more stringent" than existing federal law.

The Illinois court in this case put the matter succinctly,

What the government ignores in its argument is how little, if any, probative value lies within these patient records and the ready availability of information traditionally used to challenge the veracity of Dr. Hammond's scientific assertions and medical opinions When contrasted with the potential loss of privacy that would ensue were these medical records used in a case which the patient was not a party, the balance of harms resulting from disclosure severely outweighs the loss to the government through non-disclosure. *National Abortion Federation, et al. V. John Ashcroft (Northwestern Hospital, Movant)* No. 04 C 55, slip op. at 15 (E.D.ILL Feb. 5, 2004).

Whatever one's view of the constitutionality of the underlying statute, this dangerous fishing expedition is simply an unwarranted abuse of federal power and an abusive intrusion into women's privacy. The broader contention, that no right to medical privacy exists under federal law, threatens every American seeking medical care for any reason; it is a position that our government should never assert. We hope that, on further consideration, the Department of Justice will withdraw the subpoenas and abandon the position that our system of laws affords no privacy protection for the doctor - patient relationship.

Thank you for your attention to this matter. In view of the pressing nature of this case, we urge you to attend to this matter with the urgency it demands.

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